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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,387

01/14/2005

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EXAMINER

HOBBS, MICHAEL L

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

06/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,387	<b>Applicant(s)</b> LUTTMANN ET AL.	
	<b>Examiner</b> MICHAEL HOBBS	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**tuDETAILED ACTION**

1. Applicant's amendment filed on 03/09/2009 has been considered and entered for the record. Claims 1-19 and 21 are pending further examination upon the merits.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornelissen et al. (CAB8-Computer Application in Biotechnology, June 25-27, 2001) in views of Major et al. (*Biotechnology and Bioengineering*, vol. 34, pp 592-599, 1989) and Gruenberg et al. (US 2002/0138454 A1) and in further view of Lucido et al. (US 6,402,941).

6. Cornelissen teaches an integrated bioprocess for the production of recombinant proteins by cultivating *Pichia Pastoris*. For claim 1, Cornelissen discloses using a device that includes bioreactor that cultivates cells which is connected to an upstream feed receptacle or glycerol feed (Fig. 3) and to a downstream cross-filtration or micro filtration unit (Fig. 3, page 1 section 2 paragraph 5). The micro-filtration unit is has a retentate line connected to the bioreactor and a permeate line which connects to a product harvest vessel (Fig. 3). The process is monitored by various sensors which report back to a control unit (Fig. 4) where these sensors consist of pO<sub>2</sub> control, an off gas analysis and the use of an HPLC to determine glycerol level in the reactor (section 7 page 6 paragraph 2). Furthermore, this control is analyzer (Fig. 3) which is connected to an agitator control, but not to a pump. Also, Cornelissen does not teach a second harvest vessel connected directly to the bioreactor.

7. Major discloses a continuous fermenter for lactate production by *Lactobacillus delbreuckii* with partial cell recycle using a hollow-fiber ultra-filtration cartridge. For claim , Major discloses withdrawing a whole-cell culture from the fermenter by a

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peristaltic pump that is upstream of a waste receiver or second harvest vessel (Fig. 1; page 594 second paragraph). This would be obvious to one of ordinary skill in the art to employ the step of using a waste receiver as suggested by Major in order to remove whole cells from the reactor of Cornelissen. The suggestion for doing so at the time would have been in order to maintain a constant volume in the fermenter (page 594 first paragraph lines 7-9). Major is silent regarding the analyzer being connected to the pump.

8. Gruenberg discloses a method of optimizing a bioprocess involving complex nutrient mixtures where there are several upstream reservoirs supplying culture medium to a bioreactor. For claim 1, Gruenberg discloses the step where the product is harvested into a vessel where the control to the pump is connected to a process computer via a RS-232 connection (Fig. 1). While not specifying that the motor is connected to an analyzer, the control unit (Fig. 1) is connected to the process computer and would indicate changes within the bioreactor that would initiate the pump to withdraw product from the bioreactor. Therefore, it would have been obvious to one of ordinary skill in the art to employ the process computer controlled pump as suggested by Gruenberg to withdraw whole cells from the fermenter of Cornelissen and Major with a reasonable expectation of success.

9. Both Cornelissen and Gruenberg disclose the step of having a sensor such as a dissolved oxygen sensor connected to an analyzer or control unit where, in the case of Gruenberg, the control unit is connected to and controls the motor on the pump (Fig. 1 of Gruenberg). Furthermore, Cornelissen and Gruenberg disclose sensors that

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measure the metabolites of the cell culture, which are indirect measures of the cell concentration; they do not disclose the step of actually measuring the cell concentration within the bioreactor. The combined references of Cornelissen, Major and Gruenberg are silent regarding a cell concentration measurement step.

10. Lucido discloses an apparatus for the biological treatment of environmental contaminants and waste where the cell concentration of the microorganisms is determined by the turbidity of the solution. For claim 1, Lucido discloses the step of using an optical density sensor (sensor 22) to detect the turbidity of the solution where a higher turbidity reading in the bioreactor indicates a higher viable cell concentration (col. 6 lines 30-33). Lucido demonstrates another method used to monitor the extent of cell cultivation within a bioreactor using optical detectors instead of the metabolite sensors of Cornelissen and Gruenberg. Furthermore, the combined references demonstrate a need to monitor and control the cultivation within a bioreactor where the control means range from the metabolite sensors of Cornelissen and Gruenberg, the volumetric control of Major to the optical sensor of Lucido. The three methods perform the same task of monitoring the conditions within the bioreactor. Furthermore, these represent a finite number of methods for monitoring the conditions within the bioreactor and would have been known to one of ordinary skill in the art at the time of the invention. Therefore, following rationale E of *KSR*, 550 U.S. at \_\_\_\_, 82 USPQ2d at 1397, it would have been obvious to one of ordinary skill in the art to employ the step of using the optical sensor of Lucido within the control unit of Cornelissen, Major and Gruenberg with a reasonable expectation of success.

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11. With regards to claim 2, Cornelissen is silent regarding *in situ* sterilization of the process. For claim 2, Major discloses the step of sterilizing the hollow-fiber tube using and associated tube work with a sodium hypochlorite solution before each fermentation run (page 594 paragraph 2 lines 1-3). This step of sterilizing the filter and tubes is being interpreted as an *in situ* sterilization. Furthermore, one of ordinary skill in the art would recognize the benefits of sterilizing the filter and tubes ahead of time and flushing the lines in the manner described above in order to prevent cross-contamination between the batches. Furthermore, the sterilization step of Major solves the problem of sterilizing the equipment used in the fermentation process without having to disassemble the entire apparatus between different fermentation runs. Therefore, following rationale A of *KSR*, 550, U.S. at \_\_\_\_, USPQ2d at 1396, it would have been obvious to one of ordinary skill in the art to employ the sterilization step as suggested by Major in order to sterilize and prepare the filter and bioreactor of Cornelissen for another run with predictable results.

12. However, Cornelissen and Major are silent regarding this process being controlled by a computer or controller.

13. Gruenberg discloses a process computer that controls the operation of the fermentation process, but does not mention using the processor to control the sterilization process of the bioreactor. However, it would be obvious to one of ordinary skill in the art to modify the sterilization process of Cornelissen and Major with the process computer of Gruenberg in order to automate the sterilization process so that it may be conducted *in situ* with a reasonable expectation of success.

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14. For claim 3, Cornelissen teaches the step where the **valuable product** is recombinant proteins (Abstract). For claim 4, Cornelissen does not specify that the process is conducted in a sequential and integrated manner, but does imply that the process steps happen in a specific sequence. Referring to Figure 1 of the OA, each phase of production leads to another phase which strongly implies that the production of recombinant DNA as taught by Cornelissen is sequential. Further, the automation of this process as shown in Figure 4 of Cornelissen shows that each part of the process is integrated or coupled and are part of the whole process (page 6 section 8 paragraph 1). Regarding the method of producing biotechnologically valuable products as in claim 5, Cornelissen teaches that the cells adapt to the medium and that the cells are propagated at a constant growth rate,  $\mu$ , for the batch phase (page 3 sections 3 and 4, Fig. 2) and for claim 6 Cornelissen teaches the step of using an induction substance such as methanol during the production phase (page. 3 section 3 paragraph3) . For claim 7, Cornelissen teaches the step of using a flow diffusion analysis (FDA) to regulate a second feed receptacle (page 3 section 4, Fig. 3). With regards to claim 8, Cornelissen teaches that the product is harvested from the bioreactor by using a cross-flow filtration step (page 1 section 2 paragraph 5), but does not specify that the product is harvested cell-free. However, since the cross-flow filtration step filters out the recombinant DNA produced within the bioreactor, it is an intrinsic property of the product that it would be cell-free.

15. With regards to claim 9, Cornelissen teaches that the cell harvesting and media refreshing phase happen in parallel, but does not specifically teach that the retentate is



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harvested and that this step is followed by a medium refreshing phase. For claim 9, Major discloses the step of harvesting the whole cell mass or retentate from the bioreactor as discussed above and further includes the step of controlling the dilution rate and recycle ration by two peristaltic pumps which is being interpreted as the medium replenishing step (page 594 paragraph 1 lines 12-16). It would be obvious to one of ordinary skill in the art to employ the step of refreshing the culture medium as suggested by Major in the cultivation process of Cornelissen. The suggestion for doing so at the time would have been in order to maintain a constant volume in the fermenter (page 594 first paragraph lines 7-9).

16. For claim 10, Cornelissen teaches the step of sending the retentate back into the bioreactor (Fig. 3) and sending the permeate from the filter to the product harvest vessel (Fig. 3).

17. Regarding claim 11, Cornelissen teaches the step where the yeast used to produce the **recombinant DNA** is *Pichia pastoris* (Abstract) and for claim 12, Cornelissen teaches the step where the inducing substance is methanol (page 3 section 4, Fig. 1 & Fig. 3). Regarding claims 13 and 14, Cornelissen teaches maintaining the methanol level at a constant level and that glycerol is fed to the bioreactor (page 3 sections 3 & 4, Fig. 3).

18. For claim 15, Cornelissen does not specify that the process is conducted in a continuous and integrated manner, but does imply that the process is continuous and integrated. Referring to Figure 1 of the OA, each phase of production leads to another phase which strongly implies that the production of recombinant DNA as taught by

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Cornelissen is continuous. Further, the automation of this process as shown in Figure 4 of Cornelissen shows that each part of the process is integrated or coupled with every step and device of the larger process (page 6 section 8 paragraph 1).

19. For claim 16, the fresh media refill and cell harvesting are carried out in parallel (page 3 section 4 paragraph 6).

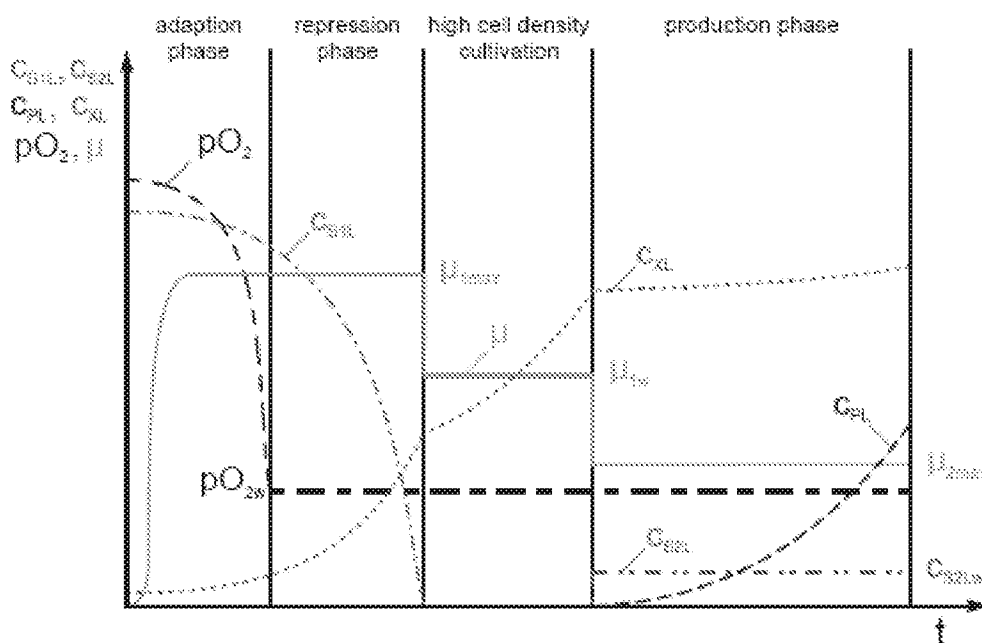


Fig. 2: Process course for automated production of recombinant proteins

Figure 1: Automated production of recombinant proteins (Cornelissen et al.)

20. Claims 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornelissen et al. (CAB8-Computer Application in Biotechnology, June 25-27, 2001) in views of Major et al. (*Biotechnology and Bioengineering*, vol. 34, pp 592-599, 1989) and Gruenberg et al. (US 2002/0138454 A1).

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21. Cornelissen teaches an integrated bioprocess for the production of recombinant proteins by cultivating *Pichia Pastoris*. For claim 17, Cornelissen teaches a device that includes bioreactor that cultivates cells which is connected to an upstream feed receptacle or glycerol feed (Fig. 3) and to a downstream cross-filtration or micro filtration unit (Fig. 3, page 1 section 2 paragraph 5). The micro-filtration unit is has a retentate line connected to the bioreactor and a permeate line which connects to a product harvest vessel (Fig. 3). The process is monitored by various sensors which report back to a control unit (Fig. 4) where these sensors consist of  $pO_2$  control, an off gas analysis and the use of an HPLC to determine glycerol level in the reactor (section 7 page 6 paragraph 2). Furthermore, this control is analyzer (Fig. 3) which is connected to an agitator control, but not to a pump. Also, Cornelissen does not teach a second harvest vessel connected directly to the bioreactor.

22. Major discloses a continuous fermenter for lactate production by *Lactobacillus delbreuckii* with partial cell recycle using a hollow-fiber ultra-filtration cartridge. For claim 17, Major discloses withdrawing a whole-cell culture from the fermenter by a peristaltic pump that is upstream of a waste receiver or second harvest vessel (Fig. 1; page 594 second paragraph). This would be obvious to one of ordinary skill in the art to employ the waste receiver as suggested by Major in order to remove whole cells from the reactor of Cornelissen. The suggestion for doing so at the time would have been in order to maintain a constant volume in the fermenter (page 594 second paragraph). Major is silent regarding the analyzer being connected to the pump.

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23. Gruenberg discloses a method of optimizing a bioprocess involving complex nutrient mixtures where there are several upstream reservoirs supplying culture medium to a bioreactor. For claim 17, Gruenberg discloses that the product is harvested into a vessel where the control to the pump is connected to a process computer via a RS-232 connection (Fig. 1). While not specifying that the motor is connected to an analyzer, the control unit (Fig. 1) is connected to the process computer and would indicate changes within the bioreactor that would initiate the pump to withdraw product from the bioreactor. Therefore, it would have been obvious to one of ordinary skill in the art to employ the process computer controlled pump as suggested by Gruenberg to withdraw whole cells from the fermenter of Cornelissen and Major with a reasonable expectation of success.

24. For claim 18, Cornelissen further teaches that the concentration of methanol is controlled by a feed pump that is connected to a control device (Fig. 3, page 3 section 4 paragraph 5) and for claim 19 the control device is a flow diffusion analysis (FDA) system (Fig. 3). For claim 21, a weight control on the bioreactor is connected to a feed pump for the product harvest vessel (Fig. 3).

### ***Response to Arguments***

25. Applicant's arguments filed 03/09/2009 have been fully considered but they are not persuasive.

26. With regards to claim 1, Applicant's arguments primarily state that the references in combination or alone do not teach a "control unit (6), an analytical system (27), a

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sensor (28), an analyzer (41), a regulator (42) and a reference operator (43)". The Examiner respectfully disagrees. Cornellissen discloses using a process computer or controller as shown in Figure 4 and the analytical system disclosed by the instant application which consists of a sensor within the bioreactor, an analyzer, a reference operator and a regulator. Further, the deficiencies within Cornelissen are corrected by Major which discloses the use of a second harvest vessel and Lucido corrects the deficiency of a sensor to measure the cell concentration within the bioreactor. Further, the control unit of Gruenberg includes a control system that is connected to a sensor that monitors the oxygen demand within the bioreactor. The software within the controller functions as the analyzer and reference operator of the instant application. Since the disclosure of the instant application does not specify how the data is analyzed and how the reference operator or adjuster limits the reaction, the skilled artisan would be fully capable of and would find it obvious to modify the software to process the incoming data signal and send a response to the harvest pump via the process computer based on a programmed reference or set-point. Therefore, the claim language does not preclude the prior art of record and the current rejection of the claims will stand.

27. With regards to the rejection of claims 17-19 and 21, Applicant reinstates the arguments used for the method claim and that the prior art of record either alone or in combination fails to disclose the claimed structure. The Examiner respectfully disagrees with this assertion. The limitations the Applicant is arguing regarding the apparatus are functional limitations that do not patentably define the claimed structure

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over the prior art of record. Further, the system disclosed by the prior art references is fully capable of performing the intended use of the claimed invention of the instant application. Therefore, the rejections of claims 17-19 and 21 are proper and will stand.

### ***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bartók et al. (US 6,599,735 B1) discloses a continuous fermentation system that includes an overall process controller that monitors and operates the reaction where a second controller is interfaced with the bioreactor and monitors the reaction and controls the harvest pump.

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL HOBBS whose telephone number is (571)270-3724. The examiner can normally be reached on Monday-Thursday 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/  
Primary Examiner, Art Unit 1797

/M. H./  
Examiner, Art Unit 1797